

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

BRIAN KEITH UMPHRESS,

Plaintiff,

v.

DAVID C. HALL, et al.,

Defendants.

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Case No. 4:20-cv-00253-P

ORDER GRANTING DEFENDANTS' MOTION TO AMEND OR MODIFY

On this day the Court considered Defendants' Motion to Amend or Modify the Court's November 12, 2020 Amended Order. The Court noted that the motion is unopposed by Plaintiff. It appearing to the Court that there is good cause to support the granting of the motion, it is

ORDERED that Defendants' motion is granted; and it is

FURTHER ORDERED that the November 12, 2020 Amended Order in this action is modified as set forth in Appendix C to the motion, a copy of which is attached to this Order.

SIGNED this ____ day of December, 2020.

The Honorable Mark Pittman
United States District Judge

APPENDIX C

Requested modifications

Defendants respectfully ask that the Court make the following (or substantially similar) modifications to the Amended Order. Alphabetic references (A. through J.) refer to the excerpts from the Amended Order quoted in Appendix A above. Proposed modifications are shown in highlighted language.

A.

[No change]

B.

"The parties later appeared for a hearing at which the Commission's counsel unequivocally confirmed that based on Judge Umphress's pleaded activities: (1) he faced no disciplinary action from the Commission; (2) the Commission does not **CURRENTLY ANTICIPATE** any disciplinary action against him; (3), his choice to decline to perform same-sex marriages and to campaign on a platform that opposes same-sex marriage and Obergefell is not violative of the Commission's **EXISTING APPLICATIONS OR** interpretation^S of Canon 4A(1); and (4) there is no allegation of facts that the Commission would take action against him. ECF No. 20." (Am. Order at 5.)

C.

"... the Commission expressly stated that it **HAS NO CURRENT OR ANTICIPATED FUTURE INTENT TO** prosecute him for his allegedly chilled behavior ..." (Am. Order at 6.)

D.

"However, the Commission asserts not only that there are no plans to investigate or discipline Judge Umphress but that they **HAVE NO CURRENT OR ANTICIPATED FUTURE INTENT TO EITHER** investigate **OR** discipline him if he acts in the very way that he claims to be chilled against. Joint Report at 2–3; ECF No. 20; see also Habersham Declaration in Support of Defendants' Mt. to Dismiss or Transfer at ¶ 7, ECF No. 7-1." (Am. Order at 9.)

E.

[No change]

F.

"... the Commission repeatedly and exhaustively asserted that it **HAS NO CURRENT OR ANTICIPATED FUTURE INTENT TO** discipline him if he acts in precisely the manner he desires." (Am. Order at 10 n.6.)

G.

"... the Commission has expressly disclaimed any **CURRENT OR ANTICIPATED FUTURE** intention of investigating or disciplining him for engaging in his desired activity ... " (Am. Order at 11.)

H.

"... the Commission repeatedly disclaimed any **CURRENT OR ANTICIPATED FUTURE** plans to investigate or discipline him if he continues to act in the manner he deems chilled." (Am. Order at 12.)

I.

"... the Commission repeatedly disclaimed any **CURRENT OR ANTICIPATED FUTURE** plans to investigate or discipline him if he chose to act in the manner he deems chilled." (Am. Order at 12.)

J.

"Finally, because the Commission repeatedly disclaimed any **CURRENT OR ANTICIPATED FUTURE** plans to investigate or discipline Judge Umphress, the future event that he fears (being subject to investigation or discipline) 'may not occur as anticipated, or indeed may not occur at all.'" (Am. Order at 12.)